



**OFFICE OF THE ATTORNEY
GENERAL**

TAXATION DIVISION

**COMPTROLLER OF PUBLIC ACCOUNTS
CASE LIST AND SUMMARY OF ISSUES**

CASES CLOSED IN 2001

January 17, 2002

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Franchise Tax

Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller Cause #98-08575
AG Case #98-1008774

Franchise Tax; Refund Filed: 08/05/98 Period: 1993-1996 Amount: \$77,428	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Philip P. Sudan, Jr. Mark F. Elvig Ryan & Sudan Houston
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Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Dismissed 12/28/00.

AirBorn, Inc. v. Rylander, et al. Cause #99-08165
AG Case #99-1189192

Franchise Tax; Refund Filed: 07/15/99 Period: 1992-1995 Amount: \$109,612.26	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the Comptroller incorrectly calculated apportioned gross receipts by applying the throw-back rule to receipts from states where Plaintiff was subject to tax. Whether application of the rule violates the commerce clause. Whether Plaintiff's right to do business was unconstitutionally taken by retroactively shortening its privilege period in the 1991 amendments to the franchise tax.

Status: Agreed Judgment based on *Comptroller v. Fisher Controls*.

Bandag Licensing Corp. v. Rylander, et al. Cause #98-06931
#03-99-00427-CV
AG Case #98-985094

Franchise Tax; Protest
Filed: 06/29/98
Period: 1990-1993
Amount: \$274,831

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.
James F. Martens
Stahl, Martens & Bernal
Austin

Issue: Whether Plaintiff has nexus with Texas for franchise tax purposes because it holds a certificate of authority.

Status: Judgment for plaintiff. Appeal in progress. Oral argument had on 02/02/00. Third Court of Appeals affirms in all respects. Petition for review filed. Court requested Response; filed 08/24/00. Court requested briefing on the merits. Petitioners' brief filed. Respondent's brief and Petitioners' reply briefs filed. Petition denied 01/11/01. Petitioners' motion for rehearing denied 03/06/01.

Continental Tire North America, Inc. v. Rylander, et al. Cause #GN100506
AG Case #011416286

Franchise Tax; Refund
Filed: 02/15/01
Period: 1992-1995
Amount: \$250,000.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Eric Hagenswold
Scott, Douglass &
McConnico
Austin

Issue: Whether post retirement benefits are debt for the franchise tax and whether ERISA preempts the inclusion of those benefits in the tax base.

Status: Non-suited.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178
AG Case #96-547384

Franchise Tax; Refund Filed: 06/09/96 Period: 1988-1989 Amount: \$36,289	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

Status: All other issues settled 12/04/98. Discovery in progress. Agreed judgment signed 12/04/98.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178A
AG Case #011441789

Franchise Tax; Refund Filed: 01/02/96 Period: 1988-1990 Amount: \$36,845.39	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

Status: Non-suited.

Fisher Controls International, Inc. v. Sharp, et al. Cause #98-08893
#03-00-00183-CV
AG Case #98-1020621

Franchise Tax; Protest Filed: 08/11/98 Period: 1992-1993 Amount: \$1,209,209	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether the phrase "is not subject to taxation" means the same thing in the earned surplus throw-back statute as it does in the taxable capital throw-back statute; whether the "throw-back" statute is constitutional; whether the Comptroller retroactively applied an amendment.

Status: Judgment for plaintiff final. Judgment on trial for attorneys' fees signed 11/19/01.

Fort James Operating Co., Inc. v. Rylander, et al. Cause #GN100498
AG Case #011417888

Franchise Tax; Refund Filed: 02/15/01 Period: 1991 Amount: \$55,009.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Non-suited.

General Motors Corp. v. Sharp, et al. Cause #97-12350
#03-00-00247-CV
AG Case #97-843800

Franchise Tax; Refund Filed: 10/31/97 Period: 1991-1994 Amount: \$18,788,858	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits, if included in surplus by the Comptroller, violate the preemption provision of ERISA. Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt.

Status: Plaintiff challenges the decision in *Sharp v. Caterpillar*, 932 S.W. 2d 230 (Tex. App. - Austin 1996, writ denied). Summary judgment granted for Comptroller 03/23/00. Third Court of Appeals reaffirmed *Caterpillar* in a 12/07/00 opinion that is not to be published. Plaintiff filed a petition for review 02/22/01. Petition denied. Plaintiff will not file a petition for writ of certiorari.

Gulf Publishing Co. v. Sharp, et al. Cause #98-04208
AG Case #98-942862

Franchise Tax; Refund Filed: 04/22/98 Period: 1992-1995 Amount: \$218,713	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Ray Bonilla Ray Wood Fine & Bonilla Austin
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Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress. Hearing on Motion for Summary Judgment set for 12/11/00. Hearing passed. Motion to be reset. Plaintiff's Motion for Summary Judgment granted.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-10929
AG Case #98-1052103

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$534,056

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-12746
AG Case #98-1079312

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$29,244

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

H.J. Heinz Co. v. Rylander, et al. Cause #99-05828
AG Case #99-1168451

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$384,530 &
\$381,167

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Nabisco* and *Upjohn*. Set for dismissal by court.
Case non-suited.

Houston Industries, Inc. v. Sharp, et al. Cause #98-11344
AG Case #98-1063316

Franchise Tax; Refund
Filed: 10/08/98
Period: 01/01/93-10/08/93
Amount: \$1,676,116

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers
Houston

Issue: Plaintiff challenges franchise "additional" tax imposed on a company that merged into Plaintiff and ceased to exist, on the grounds that the tax discriminates under state and federal equal taxation provisions.

Status: Motion for summary judgment set for hearing on 11/16/00. Plaintiff non-suited. See *Rylander v. 3 Beall Brothers 3, Inc.*, 2 S.W.3d 562 (Tex. App. - Austin 1999, pet. den.)

James River II, Inc. v. Rylander, et al. Cause #GN100497

AG Case #011416278

Franchise Tax; Refund Filed: 02/15/01 Period: Initial and 1990- 1991 Amount: \$71,159.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Non-suited.

Jiffy Lube International, Inc. v. Rylander, et al. Cause #99-12043

AG Case #99-1226747

Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$34,768.59	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gerard A. Desrochers Houston
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Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109(j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Inactive. Dismissed for want of prosecution.

LTV Steel Co., Inc. v. Sharp, et al. Cause #97-02822
AG Case #97-690528

Franchise Tax; Refund Filed: 03/07/97 Period: 1988-1991 Amount: \$337,869	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Michael V. Powell Kathleen Galloway Locke Purnell Rain Harrell Dallas
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Issue: Whether a liability payable to the Pension Benefit Guaranty Corp. pursuant to ERISA is a debt for franchise tax purposes. Whether §171.109 (a) of the Tax Code is preempted by ERISA.

Status: Settled.

Lyondell Chemical Worldwide, Inc., f/k/a Arco Chemical Co. v. Rylander, et al.
Cause #99-13283
AG Case #99-1238130

Franchise Tax; Protest & Declaratory Judgment Filed: 11/12/99 Period: 1999 Amount: \$34,100,000	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Kim E. Brightwell Garry M. Miles Wade Anderson Vinson & Elkins Austin
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Issue: Whether Rule 3.557 is invalid because it required Plaintiff to apportion its gross receipts as a sale of all of its assets to a new parent corporation when the new parent purchased Plaintiff's stock in a transaction under I.R.C. §338. Whether requiring Plaintiff to treat the transaction as an actual sale violates equal protection, equal taxation and due process.

Status: Non-suited 04/23/01.

Mcorp v. Sharp, et al. Cause #93-11603
AG Case #93-354695

Franchise Tax; Refund
Filed: 09/28/93
Period: 1985 & 1986
Amount: \$489,667

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Cynthia M. Ohlenforst
Jill B. Scott
Hughes & Luce
Dallas & Austin

Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition earnings of certain acquired subsidiaries.

Status: Answer filed. Inactive. Plaintiff in bankruptcy. Hearing on defendants' motion to dismiss set 06/11/01. Motion to dismiss granted 06/11/01.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-10928
AG Case #98-1052897

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$744,167

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-12747
AG Case #98-1079320

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1994
Amount: \$14,050

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Ore-Ida Foods, Inc. v. Rylander, et al. Cause #99-05827
AG Case #99-1168535

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$324,051 &
\$90,910

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*. Set for dismissal by court. Case non-suited.

Peter Scalamandre & Sons, Inc., et al. v. Sharp, et al. Cause #95-01183
AG Case #95-220184

Franchise Tax; Protest
Filed: 01/31/95
Period: 06/92-12/94
Amount: \$2,465

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

Susan E. Potts
Brown & Potts
Dallas

Mark Gibbons
Olson, Gibbons, Sartain,
Nicoud, Birme & Sussman
Dallas

Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive; will close. Dismissed.

Portion Pac, Inc. v. Sharp, et al. Cause #98-10930
AG Case #98-1052129

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$192,869

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Portion Pac, Inc. v. Sharp, et al. Cause #98-12748
AG Case #98-1079510

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$9,192

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Portion Pac, Inc. v. Rylander, et al. Cause #99-05826
AG Case #99-1168600

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994 & 1995
Amount: \$1,625 & \$13,750

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*. Set for dismissal by court. Case non-suited.

Richland Development Corp. v. Rylander, et al. Cause #99-12042
AG Case #99-1227638

Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$236,218.26	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gerard A. Desrochers Houston
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Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109 (j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Dismissed for want of prosecution.

Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al. Cause #99-10444
AG Case #99-1212895

Franchise Tax; Refund & Declaratory Judgment Filed: 09/08/99 Period: 01/01/93-12/31/93 Amount: \$345,393	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gerard A. Desrochers Houston
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Issue: Whether the additional tax was owed by a corporation that merged out of existence. Whether imposition of the additional tax on the non-surviving corporation of a merger violated due process, equal protection or the commerce clause. Alternatively, whether the income from the sale of intangibles was properly attributed to Texas. Plaintiff also seeks attorneys' fees.

Status: Plaintiff non-suited.

Southern Union Co. v. Sharp, et al. Cause #95-00677
AG Case #95-214930

Franchise Tax; Refund Filed: 01/18/95 Period: 1988-1990 Amount: \$573,449	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Scott, Douglass & McConnico Austin
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Issue: Whether a company may retroactively change from 30 to 20 year service lives and from 15% to zero salvage value in computing depreciation.

Status: Settled.

Southern Union Co. v. Sharp, et al. Cause #97-01622

AG Case #97-678873

Franchise Tax; Protest

Filed: 02/11/97

Period: 1991-1993

Amount: \$217,183

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Scott, Douglass &
McConnico
Austin

Issue: Whether Plaintiff should be allowed to depreciate its "distribution plant assets" over a less than thirty-year life with zero salvage value. Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated.

Status: Settled.

Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp Cause #96-11071

AG Case #96-600128

Franchise Tax; Protest

Filed: 09/13/96

Period: 1990-1993

Amount: \$779,952

(Southern Pacific)

\$171,733 (St. Louis)

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Whether push-down accounting may be used.

Status: Discovery in progress. Summary judgment set for 12/14/00. Agreed order of dismissal granted 02/07/01.

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-10931
AG Case #98-1052145

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$311,235

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-12749
AG Case #98-1080369

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1995
Amount: \$18,789

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Star-Kist Foods, Inc. v. Rylander, et al. Cause #99-05825
AG Case #99-1168634

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994
Amount: \$689

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*. Set for dismissal by court. Case non-suited.

Tesoro Petroleum Corp. v. Sharp, et al. Cause #95-05170-A
AG Case #95-277159

Franchise Tax; Refund
Filed: 04/27/95
Period: 1982-1986, & 1987
Amount: \$805,943

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Mark W. Eidman
Scott, Douglass &
McConnico
Austin

Issue: Whether post-retirement medical benefits should be excluded from surplus for franchise tax purposes. Whether the statute of limitations has run on the 1982-1986 reports.

Status: Post-retirement issue severed and docketed as Cause No. 95-05170-A. Awaiting final disposition of *General Motors*. Remaining issues settled. Case non-suited 09/20/01.

Texas Aromatics, Inc. v. Sharp, et al. Cause #94-07680
AG Case #94-103018

Franchise Tax; Protest and
Declaratory Judgment
Filed: 06/23/94
Period: 02/01/90-12/31/91
Amount: \$146,092

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Scott, Douglass &
McConnico
Austin

Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violated the federal commerce clause nexus and fair relation tests.

Status: Non-suited.

Upjohn Co., The v. Sharp, et al. Cause #98-03809
#03-00-00055-CV
AG Case #98-932917

Franchise Tax; Protest
Filed: 04/10/98
Period: 1991-1994
Amount: \$1,391,740

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Ira A. Lipstet
Jenkins & Gilchrist
Austin

Issue: Whether the exclusion from Texas receipts of receipts from the sale of health care supplies found in §171.104 is restricted to the calculation of taxable capital or whether it extends to the calculation of tax on earned surplus.

Status: Judgment for Defendants on 12/29/99. Court of Appeals affirmed trial court's judgment. Petition for review filed 12/04/00. Response filed 02/21/01. Briefs on the merits requested and filed 04/04/01. Petition denied.

Weight Watchers Food Co. v. Sharp, et al. Cause #98-10927
AG Case #98-1052137

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$122,677

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Non-suited.

Weight Watchers Gourmet Food Co. v. Rylander, et al. Cause #99-05829
AG Case #99-1168527

Franchise Tax; Refund
Filed: 05/19/99
Period: 1994
Amount: \$62,417

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

L.G. Skip Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*. Set for dismissal by court. Case non-suited.

Sales Tax

Abbassinezhad, Akbar v. Rylander, et al. Cause #99-03696
AG Case #99-1152422

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/29/99	Plaintiff's Counsel:	Max J. Luther, III
Period: 01/01/93-09/30/96		Max J. Luther, III, P.C. & Associates
Amount: \$50,061.22		Corpus Christi

Issue: Whether the amounts subjected to sales tax in audit were taxable receipts or loan monies. Also, asserting individual liability against Comptroller and Attorney General.

Status: Dismissed for want of prosecution 05/15/01.

Chevron Chemical Co. v. Rylander, et al. Cause #99-06650
AG Case #99-1178021

Sales Tax; Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 06/09/99	Plaintiff's Counsel:	Mark W. Eidman
Period: 12/31/88-06/30/92		Ray Langenberg
Amount: \$624,887.13		Curtis J. Osterloh
		Scott, Douglass & McConnico
		Austin

Issue: Whether installation of Plaintiff's extruder was non-taxable new construction. Whether any taxable modification of real property was less than 5% of the total charge. Alternatively, whether demolition and construction management services were non-taxable unrelated services. Whether security services were non-taxable property management services. Whether services performed by Brown & Root and Industrial Technicians qualified as non-taxable employee services.

Status: Settled.

Commercial Janitorial Services, Inc. v. Sharp, et al. Cause #95-03259
AG Case #95-249001

Sales Tax; Declaratory Judgment and Injunction Filed: 3/17/95 Period: 10/89 - 06/93 Amount: \$115,160	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Samuel Downing McDaniel Attorney at Law Austin Sam Passman Passman & Jones Dallas
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Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Dismissed for want of prosecution.

East Rio Hondo Water Supply Corp. v. Rylander, et al. Cause #GN002807
AG Case #001357623

Sales Tax; Refund Filed: 09/22/00 Period: 10/01/95-12/31/99 Amount: \$13,104.00	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Mediation held 4/03/01. Settled.

El Paso Silverton Construction Co., Inc. v. Sharp, et al. Cause #97-00547
AG Case #97-658485

Sales Tax; Refund Filed: 01/15/97 Period: 01/01/92-06/30/93 Amount: \$6,762	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy M. Cunningham Attorney at Law Austin
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Issue: Whether §151.311 of the Tax Code, as it existed during the audit period, discriminated against the federal government because it did not exempt purchases of contractors improving federal property while it did exempt purchases by contractors improving state property.

Status: Settled.

F.C. Felhaber & Co., Inc. v. Sharp, et al. Cause #97-05061

AG Case #97-729042

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 04/28/97	Plaintiff's Counsel:	Louis S. Zimmerman
Period: 1995		Fulbright & Jaworski
Amount: \$		Austin

Issue: Plaintiff's Texas Custom Broker's License was suspended 120 days. Whether Plaintiff must actually observe exported goods cross the border. Whether the Comptroller's investigation of Plaintiff in connection with Plaintiff's customs broker license was *ultra vires* because a non-employee was used. Whether Plaintiff's constitutional rights were violated.

Status: Plaintiff non-suited 06/07/01.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-07564

AG Case #97-773840

Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 06/30/97	Plaintiff's Counsel:	Tom Tourtellotte
Period: 03/01/89-09/30/92		Tourtellotte & Kennon
Amount: \$32,765		Austin

Issue: Whether certain resale certificates were accepted in good faith. Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled. Agreed judgment entered 05/07/01.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-13659
AG Case #97-864573

Sales Tax; Refund Filed: 12/09/97 Period: 03/01/89-09/30/97 Amount: \$18,508	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled. Agreed judgment entered 05/07/01.

Impaco, Inc. v. Rylander, et al. Cause #GN001570
AG Case #001310879

Sales Tax; Declaratory Judgment Filed: 05/31/00 Period: 07/01/88-03/31/94 Amount: \$345,124.47	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Mark Foster Foster & Malish Austin
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Issue: Whether Plaintiff's sales of rebuilt engines are exempt as sales for resale. Whether 60-day provision barred consideration of resale certificates. Whether some of the assessment is barred by the statute of limitations. Whether the assessment should be reduced because of insolvency. Whether the tax assessment violates the commerce clause, due process, equal protection or equal taxation. Plaintiff seeks attorneys' fees.

Status: Case settled. Motion to dismiss granted.

Kroger Co., The v. Sharp, et al. Cause #98-05641
AG Case #98-964231

Sales Tax; Refund Filed: 05/28/98 Period: 01/01/90-12/31/93 Amount: \$314,704	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the refuse from Plaintiff's meat and produce departments, floral shops, delicatessens, fast food restaurants, and bakeries qualifies as industrial solid waste under § 151.0048 and Rule 3.356, making its removal exempt from sales tax. Whether the labor to paint Plaintiff's dairy and warehouse facilities is tax exempt maintenance. Whether "pan glazing" is exempt as tangible personal property used or consumed during the manufacture of Kroger baked goods.

Status: Discovery in progress. Mediation held 05/23/01. Settled.

Kunz Construction Co., Inc. v. Sharp, et al. Cause #96-10758

AG Case #96-595651

Sales Tax; Protest Filed: 09/05/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/89-12/31/92 Amount: \$5,915	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin

Issue: Whether a non-profit, public hospital owned by the federal government is exempt under §151.311 even if it is excluded from the definition of non-profit hospital in the Health and Safety Code.

Status: Settled.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-08672

AG Case #96-485324

Sales Tax; Declaratory Judgment Filed: 11/13/95	Asst. AAG Assigned:	Gene Storie
Period: 04/01/91-03/31/95 Amount: \$150,214	Plaintiff's Counsel:	Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Dismissed.

Lopez-Gloria Construction Services, Inc. v. Sharp, et al. Cause #96-07811
AG Case #96-555542

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 07/05/96	Plaintiff's Counsel:	No attorney of record.
Period: 01/01/89-12/31/92		
Amount: \$791,171		

Issue: Plaintiff doesn't owe the tax and, if it does, the Comptroller abused its discretion in not settling under Tax Code §111.102.

Status: Answer filed. Plaintiff is pro se. Motion to Dismiss granted 03/16/01.

Macias, David Ronald v. Sharp Cause #96-07543
#03-98-00513-CV
AG Case #96-550565

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/28/96	Plaintiff's Counsel:	Mark N. Osborn Kemp, Smith, Duncan & Hammond El Paso
Period: 1995		
Amount: \$		

Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings. Partial summary judgment on Macias' license suspension 02/06/00. Summary judgment in Comptroller's favor obtained on licensee's suspension. Suspension period set at 90 days. Preparing for second appeal. Brief filed 12/11/00. Oral argument completed 01/24/01. Trial Court's decision suspending Plaintiff's license was affirmed on 02/28/01. Plaintiff filed petition for review with Texas Supreme Court 04/04/01. Waiver of response filed by Comptroller 04/19/01. Petition denied by Supreme Court 06/07/01.

Mazanec Construction Co., Inc. v. Sharp, et al. Cause #96-06955
AG Case #96-538759

Sales Tax; Refund Filed: 06/14/96 Period: 04/01/90-12/31/93 Amount: \$9,571	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy M. Cunningham Attorney at Law Austin
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Issue: Whether construction at a hospital owned by the federal government is exempt.

Status: Case dismissed.

Miller, Jerry W., Sr. v. Rylander, et al. Cause #GN000035
AG Case #001260140

Sales Tax; Protest Filed: 01/18/00 Period: 01/01/94-06/30/97 Amount: \$33,745.00	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Stephen D. Skinner Stephen D. Skinner & Associates Dallas
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Issue: Whether Plaintiff owes tax on mowing services sold to contractors, home builders and developers engaged in new construction of residential properties. Whether Comptroller misapplied Rule 3.356(a)(5) to Plaintiff's business. Whether Plaintiff was denied due process, and whether Plaintiff should pay penalty and interest. Plaintiff also asserts that the burden of proof is on the Comptroller to show that his business was taxable.

Status: Settlement pending. Case dismissed.

North Alamo Water Supply Corp. v. Rylander, et al. Cause #GN002424
AG Case #001344217

Sales Tax; Refund Filed: 08/16/00 Period: 04/94-07/00 Amount: \$160,000	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Mediation held 4/03/01. Settled.

Phelan Co., The v. Sharp, et al. Cause #98-00504
AG Case #98-884283

Sales Tax; Protest &
Declaratory Judgment
Filed: 01/15/98
Period: 1988-1992
Amount: \$60,587

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Rick Harrison
Harrison & Rial
Austin

Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether the sample audit resulted in an incorrect assessment because it did not represent actual business conditions. Whether the audit was conducted in accordance with generally recognized sampling techniques.

Status: Judgment for Plaintiff. Pending on attorneys' fee claim. Judgment on fees to be entered in accordance with *Bandag*.

Samedan Oil Corp. v. Sharp, et al. Cause #98-14105
AG Case #99-1097593

Sales Tax; Protest
Filed: 12/18/98
Period: 01/01/90-12/31/93
Amount: \$19,652.35

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

Mark W. Eidman
Ray Langenberg
Curtis Osterloh
Scott, Douglass &
McConnico
Austin

Issue: Whether information concerning oil and gas lease ownership and marketing are taxable information services. If so, whether the services were sold or used in Texas. Whether interest and penalty should be waived.

Status: Discovery in progress. Change of counsel filed. Case dismissed.

Sharyland Water Supply Corp. v. Rylander, et al. Cause #9910283
AG Case #001291798

Sales Tax; Refund Filed: 09/03/99 Period: 10/01/93-09/30/97 Amount: \$45,053.00	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Mediation held 04/03/01. Non-suited.

Sledd, Charles Bruce Cause #00-1180
AG Case #001381748

Sales Tax; Writ of Mandamus Filed: 11/15/00 Period: 07/04/99 & 02/18/00 Amount: \$11.54	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Charles Bruce Sledd Pro Se Houston
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Issue: Whether tax is payable on extended warranty contracts sold with electrical appliances. Whether taxable sales price must be reduced by a rebate amount. Whether charging tax on those amounts is fraud.

Status: Notice of counsel filed. Court denies mandamus.

Young's Beer Barn, Inc. v. Sharp Cause #94-14347
AG Case #94-181807

Sales Tax; Injunction

Asst. AAG Assigned:

Steve Rodriguez

Filed: 11/17/94

Period: 06/01/89-07/31/92

Plaintiff's Counsel:

Kenneth Thomas

Amount: \$144,608

Dallas

Issue: Plaintiff states, "The Comptroller erred in its audit of the plaintiff by including bank transactions in the taxable sales of the plaintiff for the period..." Plaintiff also asks for an injunction against collection action.

Status: Discovery answered by Plaintiff.

Insurance Tax

Redland Insurance Co. v. State of Texas, et al. Cause #91-15487

AG Case #91-168472

Gross Premium Tax; Protest Filed: 11/05/91 Period: 1991 Amount: \$157,098	Asst. AAG Assigned: Plaintiff's Counsel:	Jana Kinkade W. Hollis Webb, Jr. Harding, Bass, Fargason & Booth Lubbock
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Issue: Whether premium tax is preempted for crop insurance guaranteed by federal Department of Agriculture.

Status: Case dismissed.

Southwestern Life Insurance Co. v. Philip Barnes, et al. Cause #91-4800

#00-99-00719-CV

AG Case #91-60078

Gross Premium Tax; Protest Filed: 04-05-91 Period: 1990 Amount: \$231,114	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Issue resolved against taxpayer in *Southwestern Life Insurance Co. v. Georgia Flint, et al.* Plaintiff non-suited.

Controlled Substances Tax

Martinez, Jesus Manuel v. Sharp, et al. Cause #95-06432
AG Case #95-292622

Controlled Substances Tax; Declaratory Judgment Filed: 05/22/95 Period: 09/03/93 Amount: \$723,957	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Carlos Eduardo Cardenas Law Offices of Joseph Abraham, Jr. El Paso
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Dismissed for want of prosecution.

Sanchez, Joseph I. & Zyle Glass & Anthony Montoya v. Rylander, et al. Cause
#GN000444
AG Case #001271006

Controlled Substances Tax; Declaratory Judgment Filed: 02/15/00 Period: 1992 1992 1993 Amount: \$35,843.28 \$47,670 \$42,000	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Tom Moran Schneider & McKinney Houston
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Issue: Whether tax liens and tax assessments should be declared void as a violation of double jeopardy.

Status: Agreed Judgment granted 03/20/01.

Other Taxes

Bradford, Michael A. v. State of Texas Cause #380-02157-01
AG Case #011514551

Declaratory Judgment Tax; Declaratory Judgment Filed: 10/19/01 Period: 08/14/91 Amount: \$21,656.85	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne C. Tony Wright David K. Hoel The Wright Law Firm Dallas
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Issue: Whether plaintiff's drug tax lien should be nullified when plaintiff was convicted for possession of the same drugs on which tax was imposed and when the conviction includes a violation of the Tax Code but not a requirement to pay the tax.

Status: Answer filed.

Burleson ISD v. Comptroller Cause #GN002130
AG Case #001339878

Property Tax; Administrative Appeal Filed: 07/27/00 Period: Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Whether the Comptroller acted arbitrarily and did not satisfy the burden of proof in the administrative process.

Status: Non-suit filed.

Channelview ISD v. Comptroller of Public Accounts Cause #GV101944
AG Case #011474590

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/20/01	Plaintiff's Counsel:	Robert Mott
Period: 2000		Joseph Longoria
Amount: \$		Perdue, Brandon, Fielder, Collins & Mott Houston

Issue: Whether the Comptroller failed to accept the most valid evidence on the value of the district's residential, commercial personal, and utility properties.

Status: Non-suited.

McCarty-Hull Cigar Co. v. Sharp, et al. Cause #98-14217
AG Case #99-1093196

Protest Tax; Refund	Asst. AAG Assigned:	Scott Simmons
Filed: 12/22/98	Plaintiff's Counsel:	Tom Tourtellotte
Period: 09/01/93-06/30/96		Tourtellotte & Kennon
Amount: \$33,582.58		Austin

Issue: Whether tax base for cigar and tobacco tax was properly calculated for inventory bought for reduced prices or on a "two-for-one" basis.

Status: Case dismissed pursuant to settlement agreement.

McCarty-Hull Cigar Co. v. Rylander, et al. Cause #99-01996
AG Case #99-1125014

Protest Tax; Refund	Asst. AAG Assigned:	Scott Simmons
Filed: 02/19/99	Plaintiff's Counsel:	Tom Tourtellotte
Period: 09/01/93-06/30/96		Tourtellotte & Kennon
Amount: \$40,404.49		Austin

Issue: Whether promotional allowances or two-for-one sales were “ongoing” or “uniform price” transactions rather than trade discount, special discount or deal for purposes of determining the manufacturer’s list price.

Status: Case dismissed pursuant to settlement agreement.

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